

No. 15960 ✓

United States
Court of Appeals
for the Ninth Circuit

LIN FU MEI,

Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration
and Naturalization Service, Appellee.

Transcript of Record

In Two Volumes

VOLUME I.

(Pages 1 to 30, inclusive)

Appeal from the United States District Court for the
Northern District of California,
Southern Division

FILED

FEB 11 1959

PAUL P. O'BRIEN, CLERK



No. 15960

United States
Court of Appeals
for the Ninth Circuit

LIN FU MEI,

Appellant,

vs.

BRUCE G. BARBER, District Director, Immigra-
tion and Naturalization Service, Appellee.

Transcript of Record

In Two Volumes

VOLUME I.

(Pages 1 to 30, inclusive)

Appeal from the United States District Court for the
Northern District of California,
Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer to Complaint.....	13
Appeal:	
Cash Deposit in Lieu of Bond For Costs on..	24
Certificate of Clerk to Transcript of Record on	28
Designation of Record on.....	26
Notice of	24
Order Consolidating Cases on (USCA).....	30
Statement of Points on.....	25
Cash Deposit in Lieu of Bond For Costs on Appeal	24
Certificate of Clerk to Transcript of Record...	28
Complaint	5
Exhibit A—Proceedings—March 18, 1957—Decision and Order.....	10
Designation of Record on Appeal.....	26
Docket Entries, Excerpt.....	3
Findings of Fact and Conclusions of Law.....	19

Judgment	23
Modifications of Findings of Fact and Conclusions of Law, Proposed.....	17
Motion for Summary Judgment.....	15
Notice of	14
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	24
Opinion	16
Order Consolidating Cases (USCA).....	30
Statement of Points on Appeal.....	25
Transcript of Proceedings of January 16, 1958	33

NAMES AND ADDRESSES OF COUNSEL

FALLON & HARGREAVES,
550 Montgomery Street,
San Francisco 11, California,
For Appellant.

ROBERT H. SCHNACKE,
United States Attorney,

CHARLES ELMER COLLETT,
Assistant United States Attorney,
422 Post Office Building,
San Francisco, California,
For Appellees.



In the United States District Court, Northern
District of California, Southern Division

No. 36403-Civil

LIN FU MEI, Plaintiff,
vs.

BRUCE G. BARBER, as District Director of Im-
migration and Naturalization Service, San
Francisco, and DAVID H. CARNAHAN, as
Regional Commissioner of the Immigration and
Naturalization Service, Defendants.

EXCERPT FROM DOCKET ENTRIES

1957

Apr. 30—Filed Complaint—Issued Summons.

May 1—Filed affidavit of Arlin W. Hargreaves for
temp. restr. order.

1—9:30 AM Filed temp. restr. order vs. deft.
from taking into custody or proceeding
with deportation of plaintiff. (Murphy)

1—Filed motion of plaintiff for preliminary
injunction.

1—Filed order to show cause, returnable May
2, 1957 re prelim. inj. (Murphy)

* * * * *

2—Ordered memos. filed in 5 days and case
cont'd. to May 8, 1957 for submission.
(Murphy)

2—Filed answer of defendant.

2—Filed notice by plaintiff and motion for
summary judgment, May 6, 1957.

1957

May 6—Ordered case consolidated with 36393-Civil and continued to May 8, 1957 for submission. (Murphy)

8—Ordered case submitted. (Murphy)

* * * * *

Nov. 12—Filed opinion of Court (relief prayed by plaintiff denied. Findings of Fact and Conclusions of Law to be prepared by prevailing party.) (See 36393-Civil) (Murphy)

* * * * *

Nov 29—Filed proposed modifications by plaintiff to findings & conclusions.

1958

Jan. 16—Filed findings & conclusions. (Murphy)

16—Entered judgment—filed Jan. 16, 1958—denying declaratory judgment and dismissing complaint, and deft. to recover costs. (Murphy)

16—Mailed notices.

Feb. 12—Filed notice of appeal by plaintiff.

12—Filed appeal bond in sum \$250.00 (cash)

13—Mailed notices.

Mar. 4—Filed appellant's designation of record on appeal.

4—Filed statement of points upon which appellant intends to rely on appeal.

4—Filed reporter's transcript of hearing on modification of findings, Jan. 16, 1958.

[Title of District Court and Cause.]

COMPLAINT

Action For Declaratory Judgment

Comes now the plaintiff, Lin Fu Mei, and for cause of action alleges as follows:

I.

That this is an action for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for a review under the Administrative Procedures Act (5 USC 1001) et. seq.);

II.

That the defendant, Bruce G. Barber, is the District Director of the Immigration and Naturalization Service, San Francisco District, San Francisco, California;

III.

That the defendant, Bruce G. Barber, as District Director of the San Francisco District, is charged with the duty to approve or disapprove the recommendation of the immigration officer upon an application made under the Refugee Relief Act of 1953.

IV.

That the defendant, David H. Carnahan, is the Regional Commissioner of the Southwest Region of the United States Immigration and Naturalization Service and that said Region includes the San Francisco District of the Immigration and Naturalization Service.

V.

That the defendant, David H. Carnahan, is

charged with the duty to make a final determination on all decisions and recommendations forwarded to him by the defendant, Bruce G. Barber, pursuant to applications filed within the District under the provisions of Section 6 of the Refugee Relief Act of 1953.

VI.

That the plaintiff filed an application for adjustment of his immigration status to that of a permanent resident pursuant to Section 6 of the Refugee Relief Act of 1953 with the defendant, Bruce G. Barber, District Director of the Immigration and Naturalization Service, San Francisco, California.

VII.

That the plaintiff was accorded an informal interview on his application for adjustment of status to that of a permanent resident; that by order dated December 22, 1955, the Immigration Officer at San Francisco, California, an agent and employee of the defendant, Bruce G. Barber, denied the plaintiff's application on the alleged ground that the plaintiff is of a class of alien which Congress did not intend to come within the purview of the Act; that by order dated February 1, 1956, the decision of the Immigration officer was approved by the defendant, David H. Carnahan, Regional Commissioner of the Immigration and Naturalization Service.

VIII.

That on July 17, 1956, plaintiff filed an Action for Declaratory Judgment in this Court; that on Sep-

tember 28, 1956, the Honorable Judge Louis E. Goodman ordered that plaintiff's Motion for Summary Judgment be granted and that the case be remanded to the Immigration and Naturalization Service for further proceedings.

IX.

That on February 12, 1957, a further hearing was conducted by the Immigration and Naturalization Service and that under date of March 18, 1957 the Examining Immigration Officer at San Francisco, California, an agent and employee of the defendant, Bruce G. Barber, denied the plaintiff's application on the alleged ground that plaintiff's place of last residence was Formosa and that he can return thereto without fear of persecution on account of his political opinion. That by order dated April 19, 1957 the decision of the Examining Immigration Officer was approved by the defendant, David H. Carnahan, Regional Commissioner of the Immigration and Naturalization Service; that a copy of said order is attached hereto, marked Exhibit "A", and made a part of this Complaint.

X.

That during the preceding Court action before the Honorable Judge Louis E. Goodman, the defendant did not contest and thereby conceded that plaintiff's last residence was the Mainland of China; that defendants' pleadings, admissions and lack of contest of said issue in the prior proceedings, both as to the plaintiff herein and to the consolidated case of

Cheng Fu Sheng vs. Barber, Civil No. 35662, is binding upon him at this time.

XI.

That the plaintiff's place of last residence is, in fact, the Mainland of China; that plaintiff would be persecuted for his political beliefs if he were forced to return to either Formosa or the Mainland of China; that the decision of the defendant, marked Exhibit "A", is further erroneous as a matter of law inasmuch as said defendant has improperly construed the meaning of the term "residence" as used in Section 6 of the Refugee Relief Act of 1953 and further that defendants' finding that plaintiff would not be persecuted upon return to Formosa is unsupported and, in fact, contrary to the evidence of record.

XII.

That the decision of the defendant, David H. Carnahan, is a final order from which the plaintiff has no administrative appeal; that plaintiff has exhausted all administrative remedies prior to filing this Complaint;

XIII.

That plaintiff lawfully entered the United States as a bona fide non-immigrant prior to July 1, 1953; that plaintiff is unable to return to the country of his birth, nationality or last residence because of persecution or fear of persecution on account of political opinion; that plaintiff is and at all times has been a person of good moral character; that plaintiff is otherwise qualified for admission to the

United States under all provisions of the Immigration and Nationality Act except that the quota to which he is chargeable is oversubscribed.

XIV.

That plaintiff is statutorily eligible for adjustment of his immigration status to that of a permanent resident pursuant to the provisions of Section 6 of the Refugee Relief Act of 1953 as amended.

Wherefore, plaintiff requests a judgment declaring:

1. That plaintiff's application for adjustment of status to that of a permanent resident pursuant to the provisions of Section 6 of the Refugee Relief Act of 1953 may not be denied by the defendants.

2. That plaintiff's application for adjustment of status pursuant to Section 6 of the Refugee Relief Act of 1953 be returned to the defendants for approval and for submission to Congress.

3. For such other and further relief as is deemed by the Court to be proper.

Dated: April 30, 1957.

FALLON AND HARGREAVES,

/s/ By ARLIN W. HARGREAVES,
Attorneys for Plaintiff.

EXHIBIT "A"

United States Department of Justice
Immigration and Naturalization Service

File: A8 922 627—San Francisco Serial No. 697.

March 18, 1957

In re: Lin, Fu-Mei.

Proceedings under Section 6 of the Refugee Relief Act of 1953.

In Behalf of Applicant: Fallon and Hargreaves, Attorneys at Law, 550 Montgomery Street, San Francisco 11, California.

Application: Adjustment of Immigration Status.

The applicant is a 32-year old single male, a native and citizen of China. He last entered the United States at the port of Honolulu, T. H. on February 12, 1953, at which time he was admitted as a foreign government official, under the provisions of Section 101(a)(15)(A) of the Immigration and Nationality Act. The applicant testified that he was unable to return to the country of his birth because of fear of persecution, that country being communist dominated. He does not like to go back to Formosa because he thinks they will kill him because he is opposed to the Chiang Kai Shek Government. The applicant came to the United States as a member of the Chinese Nationalist Air Force to receive training under the mutual defense assistance program. After his training was completed, he deserted the Chinese Nationalist Air Force and has refused to return to Formosa. (Taiwan)

On December 22, 1955 it was recommended that the application be denied for the reason that the applicant was of the class of aliens which Congress did not intend to come within the purview of the Act. On February 1, 1956 the application was denied on this ground by the Regional Commissioner. The applicant filed an application to withhold deportation to Formosa which was subsequently denied by the Regional Commissioner on July 6, 1956. Thereafter this case was taken into the United States District Court, Northern District of California, San Francisco, California by the attorneys of record. On September 28, 1956, Judge Louis E. Goodman denied the defendant's motion to dismiss and granted the plaintiff's motion for a summary judgment. The order of the Regional Commissioner denying the application for adjustment of status under the Refugee Relief Act of 1953 was vacated and the case was remanded for further proceedings.

On February 12, 1957 a further hearing was conducted at which time additional evidence was presented. The applicant and his attorneys contend that he deserted the Chinese Air Force in this country because of his opposition to the Nationalist Government of Chiang Kai Shek, and if he returned to Formosa he would be persecuted because of his political stand. Under date of January 8, 1957 the Chinese Consul General in San Francisco officially advised this Service that his Government had directed him to declare that according to their law this applicant is subject to prosecution for desertion upon his return to Taiwan. He will face a trial in

an orderly, judicial process, in which there will be a formal indictment and the defendant is permitted to be defended by lawyers, including the right to cross-examine witnesses against him. If convicted he will be subject to punishment according to Article 93 of the Criminal Code governing the personnel of the Army, Navy, and Air Force of the Republic of China, the maximum sentence being imprisonment for not more than 3 years. The allegation that he will be subject to persecution or death sentence is entirely groundless.

It is believed that members of the Armed Forces of China should be placed in the same category as other Government Officials holding official positions in Formosa (Taiwan). As the Chinese Nationalist Government has possession of Formosa and is there indefinitely, it is believed that the residence is in Formosa. It is therefore apparent that this applicant can return to Formosa (Taiwan), the place of his last residence, without fear of persecution on account of his political opinion, and the application will be denied on that ground.

Recommendation: It is recommended that the alien's application for adjustment of immigration status under the provisions of Section 6 of the Refugee Relief Act of 1953 be denied for the reason that the applicant can return to Formosa (Taiwan), the place of his last residence, without fear of persecution on account of his political opinion.

A. J. Borstadt,

ew

Immigration Officer

Upon consideration of the entire record, and the exceptions filed, we find that the exceptions are without merit and that the application should be denied.

/s/ DAVID H. CARNAHAN,
Regional Commissioner,
Southwest Region.

So Ordered. April 19, 1957.

[Endorsed]: Filed April 30, 1957.

[Title of District Court and Cause.]

ANSWER

Comes Now the defendants Bruce G. Barber, as District Director of Immigration and Naturalization Service, San Francisco, and David H. Carnahan, as Regional Commissioner of the Immigration and Naturalization Service, and answers the action for declaratory judgment herein as follows:

I.

The allegations of Paragraphs I, II, III, IV, V, VI, VII, VIII, IX and XII are admitted.

II.

The allegations of Paragraphs XI, XIII, XIV, are denied.

III.

With reference to the allegations of Paragraph X to the effect that the defendants did not contest and thereby conceded that plaintiff's last residence was the Mainland of China in the Court action before the Honorable Judge Louis E. Goodman, the defendants state that the question of the residence

of the plaintiff was not before the Honorable Judge Goodman. Instead the question was the issue as to whether or not the plaintiff was within a class to be considered within Section 6 of the Refugee Relief Act of 1953. Furthermore, that a prior administrative decision is not binding upon an administrative agency and upon the subsequent proceedings of the Immigration and Naturalization Service pursuant to the order of the Honorable Judge Louis F. Goodman, the question of residence was determined in accordance with the evidence considered.

Wherefore, the defendants pray that the relief prayed for by the plaintiff be denied and that the defendants have their costs of suit herein.

Dated: May 2, 1957.

LLOYD H. BURKE,
United States Attorney,
/s/ By JAMES W. GRANT,
Special Assistant U. S.
Attorney.

Notice of Mailing Attached.

[Endorsed]: Filed May 2, 1957.

[Title of District Court and Cause.]

NOTICE OF MOTION

To defendants above-named and Lloyd H. Burke, United States Attorney, and Charles Elmer Collett, Assistant United States Attorney, Post Office Building, San Francisco, California, his attorneys:

Please take notice that on Monday, May 6, 1957, at the hour of 9:30 o'clock A.M. or as soon thereafter as the matter can be heard in the Law and Motion Department, United States District Court, Post Office Building, Seventh and Mission Streets, San Francisco, California, the plaintiff will present a Motion for Summary Judgment. The copy of the Motion is attached hereto and made a part hereof.

Dated: May 2, 1957.

FALLON & HARGREAVES,
/s/ By ARLIN W. HARGREAVES,
Attorneys for Plaintiff.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

The plaintiff, Lin Fu Mei, by and through his attorneys of record, hereby moves the court to enter Summary Judgment for the plaintiff in accordance with the provisions of Rule 56 of the Rules of Civil Procedure on the ground that the pleadings and Exhibits heretofore filed with this Court show that the plaintiff is entitled to judgment as a matter of law.

Dated: May 2, 1957.

FALLON & HARGREAVES,
/s/ By ARLIN W. HARGREAVES,
Attorneys for Plaintiff.

[Endorsed]: Filed May 2, 1957.

In The United States District Court, Northern
District of California, Southern Division

Nos. 36393 and 36403

CHENG FU SHENG and LIN FU MEI,
Plaintiffs,
vs.

BRUCE G. BARBER, as District Director of Im-
migration and Naturalization Service, San
Francisco, and DAVID H. CARNAHAN, as
Regional Commissioner of the Immigration and
Naturalization Service, Defendants.

OPINION

Murphy, District Judge.

Upon the well reasoned authority to be found in
Wei v. Robinson, a case decided by the United
States Court of Appeals, Seventh Circuit, June 28,
1957 (246 F. 2d 739) the relief sought by the peti-
tioners, and each of them, is hereby denied.

Let the prevailing party prepare findings of fact
and conclusions of law, which because of the nature
of the issues involved would seem eminently appro-
priate in this instance.

Dated: November 12th, 1957.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed November 12, 1957.

[Title of District Court and Cause.]

PROPOSED MODIFICATIONS OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

(No changes in first four paragraphs.)

V.

In an oral decision rendered March 2, 1956 plaintiff was found deportable from the United States on the charge set forth in the warrant of arrest. Plaintiff was granted voluntary departure with an alternate order of deportation to take effect in the event he failed to depart when and as required by the District Director.

VI.

On April 26, 1956 a warrant of deportation was issued.

Conclusions of Law

I.

Plaintiff is subject to deportation on the charge set forth in the warrant of arrest.

II.

The warrant of deportation issued by the defendant is valid.

(Change petitioner to plaintiff throughout.)

Reasons For Objections

Objection is taken to Findings of Fact V, VI, VII, VIII, IX and X and to Conclusions of Law II, III and V submitted by defendants. The ground of objection is that the above Findings and Con-

clusions pertain to plaintiff's eligibility for adjustment of status under Section 6 of the Refugee Relief Act of 1953. Although the issue of plaintiff's eligibility under Section 6 was presented herein, it appears that no determination of said issue was made in the opinion of this Court filed November 12, 1957.

Relief was denied to plaintiff upon the authority of *Wei v. Robinson*, 246 F 2d 739. That case reviewed a declaratory judgment of the trial court which had held an order of deportation to be invalid. The only issue presented and determined by the Court in *Wei v. Robinson* was whether an alien who is admitted prior to the effective date of the Immigration and Nationality Act of 1952 as a government official and subsequently fails to maintain that status is subject to deportation under the provisions of Section 241 (a) (9) of the Immigration and Nationality Act of 1952. That Court did not consider nor decide whether or not Wei was eligible for change in status under the provisions of the Refugee Relief Act of 1953. This Court's opinion then, based upon the decision in *Wei v. Robinson*, provides no basis for Findings of Fact or Conclusions of Law to be made concerning any other issue than that of deportability.

Dated: November 29, 1957.

Respectfully submitted.

FAILON & HARGREAVES,
/s/ By ARLIN W. HARGREAVES,
Attorneys for Plaintiff.

[Endorsed]: Filed November 29, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above action having come on for trial before the Honorable Edward P. Murphy, Judge of the above-entitled Court, on the 6th day of May, 1957, petitioner appearing by his attorneys, Fallon and Hargreaves, and defendants appearing by Lloyd H. Burke, United States Attorney, and James W. Grant, Special Assistant United States Attorney, and the Court being fully advised of the premises, makes the following findings of fact and conclusions of law.

Findings of Fact

I.

The petitioner last entered the United States from Taiwan (Formosa) at the Port of Honolulu, Territory of Hawaii, on February 12, 1953. He was admitted as an official of the Chinese Nationalist Government in the status of a bona fide non-immigrant under the provisions of Section 101(a)(15) (A) (ii) of the Immigration and Nationality Act of 1952, (66 Stat. 167; 8 USCA 1101).

II.

The petitioner at the time of entry was an officer in the Chinese Nationalist Air Force who had come to the United States under the Mutual Defense Assistance Program for advance pilot training at Tyndall Air Force Base, Florida, for the period of eleven weeks.

III.

During May 1953, the petitioner, having completed said advance pilot training, and while enroute to Taiwan (Formosa) with a Chinese Nationalist Air Force group, deserted said Air Force group in San Francisco, California, took employment in a civilian job, and remained in the United States.

IV.

On November 29, 1954, a warrant for the arrest of the petitioner as an alien illegally in the United States was issued by the Immigration and Naturalization Service charging "he was admitted as a non-immigrant and failed to comply with the conditions of the non-immigrant status in which he was admitted, to-wit, an accredited government official or employee, as described in Section 101 (a)(15)(A) (ii) of the Act."

V.

On December 23, 1954, the petitioner filed an Application under Section 6 of the Refugee Relief Act of 1953, and on February 1, 1956, after appropriate hearings, the application was denied by the Regional Commissioner.

VI.

On April 19, 1956, the petitioner applied for a stay of deportation under Section 243(h) of the Immigration and Nationality Act of 1952, and on May 16, 1956, after appropriate hearing, this application was denied.

VII.

On April 26, 1956, petitioner having been found

to be an alien illegally in the United States in that he had failed to maintain the status under which he was admitted, a warrant of deportation was issued.

VIII.

In an action for a declaratory judgment filed July 12, 1956, this Court on September 28, 1956, vacated the Order of the Regional Commissioner denying the application for adjustment of status and remanded the case to respondent for further proceedings to determine whether the petitioner was eligible for relief under Section 6 of the Refugee Relief Act.

IX.

On April 19, 1957, after further hearings, the Regional Commissioner denied the plaintiff's application under Section 6 of the Refugee Relief Act on the grounds that the petitioner did not come within the provisions thereof since he is not unable to return to Taiwan (Formosa), the place of his last residence, because of persecution or fear of persecution on account of race, religion or political opinion.

X.

The petitioner's place of last residence is Taiwan (Formosa), and the petitioner is able to return to Taiwan (Formosa) without persecution or fear of persecution on account of his race, religion or political opinion.

Conclusions of Law

I.

The petitioner's status as a non-immigrant entitled to remain in the United States terminated

when he deserted his Air Force group and took work other than specified in the terms of his admission.

II.

Upon the termination of his status as a bona fide non-immigrant within the meaning of Section 6 of the Refugee Relief Act, petitioner became ineligible for consideration for the benefits of that act.

III.

The petitioner is not eligible for consideration under Section 6 of the Refugee Relief Act since he can return to his place of last residence, Taiwan (Formosa) without persecution or fear of persecution on account of race, religion or political opinion.

IV.

Petitioner has at all times been afforded due process and a fair hearing, and there has been no abuse of administrative discretion.

V.

The petitioner is not entitled to the declaratory judgment which he seeks by this action.

VI.

The warrant of deportation issued by the defendant is valid.

Let Judgment be entered accordingly.

Dated: January 16th, 1958.

/s/ EDWARD P. MURPHY,

United States District Judge.

Notice of Mailing Attached.

[Endorsed]: Filed January 16, 1958.

In The United States District Court, Northern
District of California, Southern Division

Civil No. 36403

LIN FU MEI,

Plaintiff,

vs.

BRUCE G. BARBER, as District Director of Im-
migration and Naturalization Service, San
Francisco, and DAVID H. CARNAHAN, as
Regional Commissioner of the Immigration and
Naturalization Service, Defendants.

JUDGMENT

The above cause came on regularly for trial be-
fore the Court upon the complaint for declaratory
judgment, and the answer of the defendants.

The plaintiff having moved for a summary judg-
ment, and the matter having been duly submitted,
the Court, after reviewing the administrative rec-
ord, having on November 12, 1957, made and en-
tered its order denying the relief sought by the
petitioner, and having thereafter on January 16,
1958, made and filed its findings of fact and con-
clusions of law;

It Is Hereby Ordered, Adjudged and Decreed
that the plaintiff's prayer for declaratory judgment
be denied; that the complaint and action be dis-
missed and that the defendants have judgment of
their costs.

Dated: January 16, 1958.

/s/ EDWARD P. MURPHY,
United States District Judge.

Entered in Civil Docket Jan. 16, 1958.

[Endorsed]: Filed January 16, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

You are hereby notified that the plaintiff, Lin Fu Mei, appeals to the United States Court of Appeals for the Ninth Circuit, from the Final Judgment entered in the above action on January 16, 1958.

Dated: February 11, 1958.

FALLON & HARGREAVES,
/s/ By ARLIN W. HARGREAVES,
Attorneys for Appellant.

[Endorsed]. Filed February 12, 1958.

[Title of District Court and Cause.]

CASH DEPOSIT IN LIEU OF BOND FOR COSTS ON APPEAL

The undersigned acknowledges that he and his personal representatives are bound to pay to defendant, the sum of Two Hundred Fifty (\$250.00) Dollars, and he hereby deposits in cash the sum of Two Hundred Fifty (\$250.00) Dollars into the

registry of this Court in lieu of a bond for costs on appeal.

The condition upon which said deposit is made is that, whereas the plaintiff has appealed to the Court of Appeals for the Ninth Circuit by Notice of Appeal filed February 12, 1958, from the Judgment of this Court entered January 16, 1958, if the plaintiff shall pay all costs adjudged against him if the appeal is dismissed or the Judgment affirmed, or such costs as the Appellate Court may award if the Judgment is modified, then said deposit shall be returned to the undersigned, but if the plaintiff fails to perform this condition, delivery of said deposit to the defendant shall be made forthwith.

/s/ LIN FU MEI,
Plaintiff.

Signed and acknowledged before me this 12th day of February, 1958.

[Seal] /s/ JOSEPH P. FALLON, JR.,
Notary Public, in and for the City and County of
San Francisco, State of California.

Acknowledgment of Service Attached.

[Endorsed]: Filed February 20, 1958.

[Title of District Court and Cause.]

STATEMENT OF POINTS

The points upon which Appellant will rely on appeal are:

1. The Court erred in finding that the Plaintiff-

Appellant's place of last residence is Taiwan (Formosa).

2. The Court erred in finding that the Plaintiff-Appellant is able to return to Taiwan (Formosa) without persecution or fear of persecution on account of his race, religion or political opinion.

3. The Court erred in concluding that the Plaintiff-Appellant became ineligible for the benefits of Section 6 of the Refugee Relief Act upon termination of his status as a bona fide non-immigrant in the United States.

Dated: March 3, 1958.

FALLON AND HARGREAVES,
/s/ By ROBERT S. BIXBY,
Attorneys for Plaintiff-
Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed March 4, 1958.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure, the plaintiff-appellant hereby designates for inclusion in the record on appeal to the United States Court of Appeals for the Ninth Circuit, taken by Notice of Appeal filed February 12, 1958, the following portions of the record, proceedings and evidence in this action:

1. Complaint with attachment.
2. Answer.
3. Certified copy of the record of the Immigration and Naturalization Service.
4. Plaintiff's Motion for Summary Judgment.
5. Opinion dated November 12, 1957.
6. Proposed Modifications of Findings of Fact and Conclusions of Law.
7. Reporter's transcript of hearing on Modifications of Findings.
8. Findings of Fact and Conclusions of Law dated January 16, 1958.
9. Judgment dated January 16, 1958.
10. Notice of Appeal.
11. Statement of Points on Appeal.
12. This Designation.
13. Docket Entries.

Dated: March 3, 1958.

FALLON AND HARGREAVES,
/s/ By ROBERT S. BIXBY,
Attorneys for Plaintiff-
Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed March 4, 1958.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for the appellant:

Excerpt from Docket Entries.

Complaint (Action for Declaratory Judgment).

Answer.

Notice and Motion of Plaintiff for Summary Judgment.

Opinion of Court.

Proposed Modifications of Findings of Fact and Conclusions of Law by Plaintiff.

Findings of Fact and Conclusions of Law.
Judgment.

Notice of Appeal.

Appeal Bond.

Statement of Points Upon Which Appellant Intends to Rely on Appeal.

Appellant's Designation of Record on Appeal.

Defendant's Exhibit 1 (Certified copy of record of Immigration and Naturalization Service).

Reporter's Transcript of Proceedings of Jan. 16, 1958.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 24th day of March, 1958.

[Seal]

C. W. CALBREATH,

Clerk,

/s/ By MARGARET P. BLAIR,

Deputy Clerk.

[Endorsed]: No. 15960. United States Court of Appeals for the Ninth Circuit. Lin Fu Mei, Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization Service, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: March 24, 1958.

Docketed: April 2, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 15959

CHENG FU SHENG, Petitioner-Appellant,

vs.

BRUCE G. BARBER, as District Director of
Immigration and Naturalization Service, San
Francisco, Respondent-Appellee.

No. 15960

LIN FU MEI, Appellant,

vs.

BRUCE G. BARBER, as District Director of
Immigration and Naturalization Service, San
Francisco, and

DAVID H. CARNAHAN, as Regional Commis-
sioner of the Immigration and Naturalization
Service, Appellees.

ORDER

Considering the Motion of Appellants for an order to consolidate the above entitled and numbered cases for the purpose of briefing, argument and submission it is this 22nd day of April, 1958,

Ordered that the above entitled cases be consolidated for the purpose of briefing, argument and submission.

/s/ ALBERT LEE STEPHENS,
Chief United States Circuit
Judge.

[Endorsed]: Filed April 22, 1958. Paul P.
O'Brien, Clerk.